

TREATY WITH THE COOK ISLANDS ON FRIENDSHIP AND DELIMITATION OF THE MARITIME BOUNDARY

FEBRUARY 11 (legislative day, JANUARY 25), 1980.—Ordered to be printed

Mr. PERCY, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany Ex. P, 96-2]

The Committee on Foreign Relations, to which was referred the Treaty between the United States of America and the Cook Islands on Friendship and Delimitation of the Maritime Boundary between the United States of America and the Cook Islands, signed at Rarotonga on June 11, 1980 having considered the same, reports favorably thereon without amendment and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

The purpose of the treaty is to delimit the continental shelf and overlapping claims of jurisdiction resulting from the establishment of a 200 nautical mile fishery conservation zone off the coasts of American Samoa in accordance with the Fishery Conservation and Management Act of 1976, and the establishment of a 200 nautical mile zone by the Cook Islands. The further purpose is to resolve the status of four islands.

BACKGROUND

The establishment of a 200 nautical mile fishery conservation zone off the coasts of the United States, including American Samoa, pursuant to the Fishery Conservation and Management Act of 1976, and of a 200 nautical mile zone off the coasts of the Cook Islands, created the need for agreement on a maritime boundary in order to avoid enforcement problems and to provide for certainty in the development of resources in the area where such 200 nautical mile zones overlap.

In connection with establishing the maritime boundary it was necessary to address and resolve the issue of the sovereignty over the islands of Pukapuka (Danger), Manihiki, Rakahanga, and Penrhyn. The U.S. claims to these particular islands arise out of occasional 19th century

visits to the islands by American whalers, and by execution of guano bonds under the Guano Islands Act of 1856. The U.S. claim has virtually no legal merit and is not supported by any other nation. The United States has never exercised governmental jurisdiction over these islands. They were first administered by Great Britain and then placed under the administration of New Zealand in 1901. The islands are inhabited. These islands and these people have historically been an integral part of the Cook Islands and are represented in the Cook Islands Government. Continued assertion of these claims is inconsistent with the U.S. interest of maintaining friendly relations with the peoples of the South Pacific.

Another matter which had to be addressed in connection with this treaty is the political status of the Cook Islands Government. The Cook Islands is in free association with New Zealand. It is internally self governing, and it may unilaterally declare its independence from New Zealand at any time. It exercises its foreign affairs competence in conjunction with New Zealand. It declared and does manage its 200 nautical mile zone. In this regard, it was necessary to address the question of whether it was legally possible for the United States to enter into a treaty relationship with a political entity other than a fully sovereign state.

It was concluded that the only limitation on the foreign affairs capacity of the Cook Islands Government existed in favor of New Zealand. The Government of New Zealand confirmed that the Cook Islands has the competence to enter into this treaty and that New Zealand has no objection to its so doing.

Officials met in Rarotonga October 12-14, 1979 to begin negotiations. A representative of the Government of American Samoa participated as a member of the U.S. delegation to these talks. A draft agreement was negotiated at that time. Thereafter, the geographic coordinates of the maritime boundary were established through diplomatic channels. The treaty establishes the maritime boundary between the United States off the coast of American Samoa and the Cook Islands, and it resolves the status of four islands in the Northern Cook Islands. The treaty was signed on June 11, 1980 on the occasion of the first visit by a U.S. Ambassador to the Cook Islands.

COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on December 1, 1981. The following individuals have testified on this treaty: Deputy Assistant Secretary of State for East Asian and Pacific Affairs Daniel A. O'Donohue; Ambassador William Bodde, U.S. Ambassador in Fiji; Rear Admiral Donald S. Jones, Director for East Asian and Pacific Affairs in the Office of the Assistant Secretary of Defense for International Security Affairs; Mr. Terry Fortune, Assistant Legal Advisor for East Asia, Department of State; Mr. David Colson, Associate Legal Advisor for Oceans, Environmental and Scientific Affairs, Department of State; the Honorable Peter Coleman, Governor of American Samoa; Mr. Mark J. Seidenberg of Los Angeles, California; and the Honorable Frederick W. Rohlfing of Honolulu, Minority Leader of the Hawaii House of Representatives.

On January 28, 1982 the Committee considered the treaty, but in the absence of a physical quorum, deferred a vote until February 2. On

this date, the Committee, by a vote of 13 to 2, ordered it reported favorably to the Senate for its advice and consent. Voting in favor of the treaty were Senators Percy, Baker, Hayakawa, Lugar, Kassebaum, Boschwitz, Pressler, Pell, Biden, Glenn, Tsongas, Cranston and Dodd. In opposition were Senators Helms and Zorinsky.

SECTION-BY-SECTION ANALYSIS

The Department of State has provided the following section-by-section analysis of the treaty:

Article I sets out the specific geographic coordinates which define the maritime boundary. This boundary is approximately 566.4 nautical miles in length, and consists of 24 segments. At its closest point it is 119.6 nautical miles from the nearest American Samoa island. This is a negotiated maritime boundary developed on the basis of principles deemed by the parties to be equitable in view of the relevant geographic circumstances.

Article II sets out the geodetic and computational bases used for describing the boundary, including the particular charts from which calculations were made in establishing the boundary.

Article III describes the legal effect of the maritime boundary. It provides that the Cook Islands shall not claim or exercise for any purpose sovereign rights or jurisdiction over the waters or seabed and subsoil on the United States side of the boundary and, that on the Cook Islands' side of the boundary, the United States will not claim or exercise for any purpose sovereign rights or jurisdiction over the waters or seabed and subsoil.

Article IV is a disclaimer provision which makes clear that agreement on the maritime boundary does not constitute recognition of the jurisdiction that the other party may claim to exercise in the delimited area beyond that otherwise recognized by each party to the treaty. In this connection the United States and the Cook Islands maintain different positions concerning the breadth of the territorial sea and the nature of jurisdiction that may be exercised within the 200 nautical mile zone. Article IV is intended to preserve the respective positions of each party.

Article V is an express statement that the United States by virtue of this treaty recognizes the sovereignty of the Cook Islands over the islands of Penrhyn, Pukapuka, (Danger), Manihiki and Rakahanga.

Article VI is a general cooperation provision. It is in the U.S. interest to develop a close, friendly and cooperative relationship with the Cook Islands by promoting direct government to government contacts and in particular by promoting contacts between American Samoa and the Cook Islands.

Article VII provides that the English language text is the official treaty text and that the treaty will enter into force on the date of the exchange of instruments of ratification.

In connection with the negotiation of the treaty, discussions took place relating to the fishery resources within the Cook Islands' 200 nautical mile zone. The attached letters set forth the positions and the understandings of the two sides. The United States sought and received assurances that U.S. flag fishing vessels and foreign vessels supplying the canneries in American Samoa will not be barred on a dis-

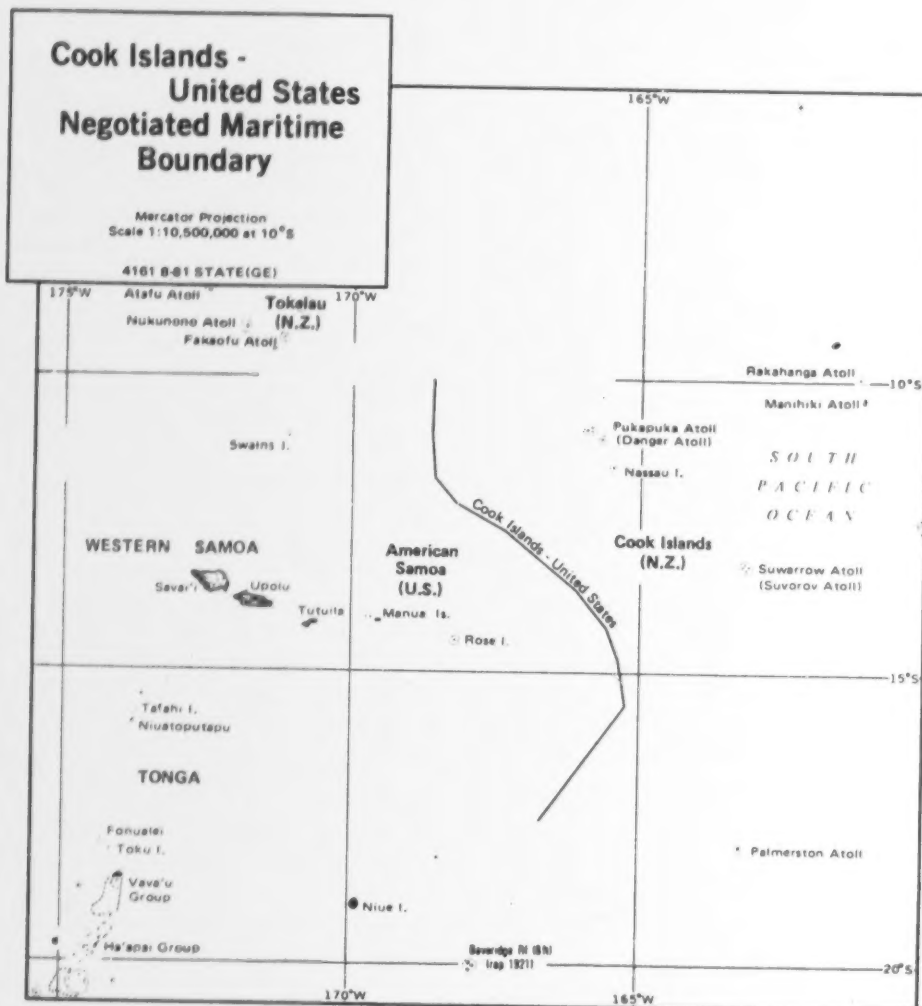
criminary basis from seeking licenses to fish in the Cook Islands' 200 mile zone. This separate exchange of letters was transmitted to the Senate for its information.

COST ESTIMATE

The treaty will have no budgetary impact and ratification will not require the authorization or appropriation of any additional funds, according to the Administration.

TEXT OF THE RESOLUTION OF RATIFICATION

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the United States of America and the Cook Islands on Friendship and Delimitation of the Maritime Boundary between the United States of America and the Cook Islands, signed at Rarotonga on June 11, 1980.



BEST COPY AVAILABLE

TREATY WITH NEW ZEALAND ON THE DELIMITATION
OF THE MARITIME BOUNDARY BETWEEN THE UNITED
STATES AND TOKELAU

FEBRUARY 11 (legislative day, JANUARY 25), 1982.—Ordered to be printed

Mr. PERCY, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany Treaty Doc. 97-5]

The Committee on Foreign Relations to which was referred the Treaty between the United States of America and New Zealand on the Delimitation of the Maritime Boundary between the United States of America and Tokelau, signed at Tokelau on December 2, 1980, having considered the same, reports favorably thereon without amendment and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

The purposes of the treaty are to establish the maritime boundary between American Samoa and Tokelau, to resolve the status of three Tokelauan islands in the area, and to confirm United States sovereignty over Swains Island.

BACKGROUND

The establishment of a 200 nautical mile fishery conservation zone off the coasts of the United States, including American Samoa, pursuant to the Fishery Conservation and Management Act of 1976, and the establishment by New Zealand of a 200 nautical mile zone off the coasts of Tokelau, created the need for agreement on a maritime boundary in order to avoid enforcement problems and to provide for certainty in the development of resources in the area where such 200 nautical mile zones overlap.

In connection with establishing the maritime boundary it was necessary to address and resolve the issue of sovereignty over the islands of Atafu, Nukunono, and Fakaofo which together comprise Tokelau. These atolls have a total population of 166 people and a land area of

four square miles. In 1889 the British declared a protectorate over the islands and formally annexed them in 1916. In 1925 administration of the Tokelau islands was transferred from the United Kingdom to the Dominion of New Zealand, which has continued to administer them. Formal sovereignty was transferred from the United Kingdom to New Zealand in 1948.

It was not until 1939 that the United States disputed the British or New Zealand claims of sovereignty. The United States based its claim to the islands on mapping and on the Guano Act of 1856. Two of the islands were included in a United States Guano Mining Bond in 1856 but there is no indication that an American company has ever mined the islands for guano. The United States has never occupied these islands or exercised governmental jurisdiction over them. Measured against the longstanding United Kingdom/New Zealand claim, the United States claim to these islands has no substantial basis under applicable principles of international law, according to the Department of State. The U.S. claim is not supported by any other nation, including its closest allies. Continued assertion of these claims is inconsistent with the United States interest of maintaining friendly relations with the peoples of the South Pacific. The islands have no appreciable strategic or economic value to the United States.

Delimitation of the maritime boundary also involves the issue of sovereignty over Swains Island in American Samoa. Swains, a privately owned island, was annexed to American Samoa in 1925. The Tokelauans have claimed that Swains Island is historically and culturally part of Tokelau, and they have so informed the United Nations. This Treaty effectively extinguishes the Tokelauan claim and confirms United States sovereignty over Swains.

The Treaty was negotiated through diplomatic channels and was concluded between the United States and New Zealand, rather than Tokelau, because Tokelau is a non-self-governing dependency of New Zealand. The Treaty was signed by the United States Ambassador to New Zealand and by Itieli Pereira, Amusia, Patea, and Aloision Ineleo of Tokelau, who were authorized to act on behalf of New Zealand.

COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on December 1, 1981. The following individuals have testified on this treaty: Deputy Assistant Secretary of State for East Asian and Pacific Affairs Daniel A. O'Donohue; Ambassador William Bodde, U.S. Ambassador in Fiji; Rear Admiral Donald S. Jones, Director for East Asian and Pacific Affairs in the Office of the Assistant Secretary of Defense for International Security Affairs; Mr. Terry Fortune, Assistant Legal Advisor for East Asia, Department of State; Mr. David Colson, Associate Legal Advisor for Oceans, Environmental and Scientific Affairs, Department of State; the Honorable Peter Coleman, Governor of American Samoa; Mr. Mark J. Seidenberg of Los Angeles, California; and the Honorable Frederick W. Rohlfs of Honolulu, Minority Leader of the Hawaii House of Representatives.

On January 28, 1982 the Committee considered the treaty, but, in the absence of a physical quorum, deferred a vote until February 2. On this date, the Committee, by a vote of 13 to 2, ordered it reported favorably to the Senate for its advice and consent. Voting in favor

of the treaty were Senators Percy, Baker, Hayakawa, Lugar, Kassebaum, Boschwitz, Pressler, Pell, Biden, Glenn, Tsongas, Cranston, and Dodd. In opposition were Senators Helms and Zorinsky.

SECTION-BY-SECTION ANALYSIS

The Department of State has provided the following section-by-section analysis of the treaty:

The operative portion of the Treaty consists of seven articles.

Article I sets out the specific geographic coordinates which define the maritime boundary. This boundary is approximately 318 nautical miles in length, and consists of 7 segments. At its closest point it is 48 nautical miles from the nearest American Samoa island. The boundary was negotiated on the basis of internationally accepted principles deemed by the parties to be applicable in view of the relevant geographic circumstances.

Article II sets out the geodetic and computational bases used for describing the boundary, including the particular charts from which calculations were made in establishing the boundary.

Article III describes the legal effect of the maritime boundary. It provides that on the Tokelau side of the boundary, the United States will not claim or exercise for any purpose sovereign rights or jurisdiction over the waters or seabed and subsoil, and that, on the United States side of the boundary, there shall not be claimed or exercised for any purpose in respect to Tokelau sovereign rights or jurisdiction over the waters or subsoil. Since Swains Island lies on the American side of the boundary, this effects the renunciation by New Zealand of all claims to that island with respect to Tokelau. Further, the preamble states that New Zealand has never claimed or administered as part of Tokelau any of the islands presently administered by the United States as part of American Samoa, which, by statutory definition, includes Swains.

Article IV is a disclaimer provision which makes clear that agreement on the maritime boundary does not constitute recognition of the jurisdiction that the other party may claim to exercise in the delimited area beyond that otherwise recognized by each party to the Treaty. In this connection the United States and New Zealand maintain different positions concerning the breadth of the territorial sea and the nature of jurisdiction that may be exercised within the 200 nautical mile zone. Article IV is intended to preserve the respective positions of each party.

Article V is an express statement that the United States by virtue of this Treaty recognizes that sovereignty over the islands of Atafu, Nukunono, and Fakaofo is vested in the people of Tokelau and exercised on their behalf by the Government of New Zealand.

Article VI is a general cooperation provision. It is in the United States interest to cooperate with New Zealand in order to promote the social and economic development and stability of the region.

Article VII provides that the English language text is the official Treaty text and that the Treaty will enter into force on the date of the exchange of instruments of ratification.

In connection with the negotiation of the Treaty, discussions took place relating to the fishery resources within the Tokelau Islands' 200 nautical mile zone. The attached letters set forth the positions and the

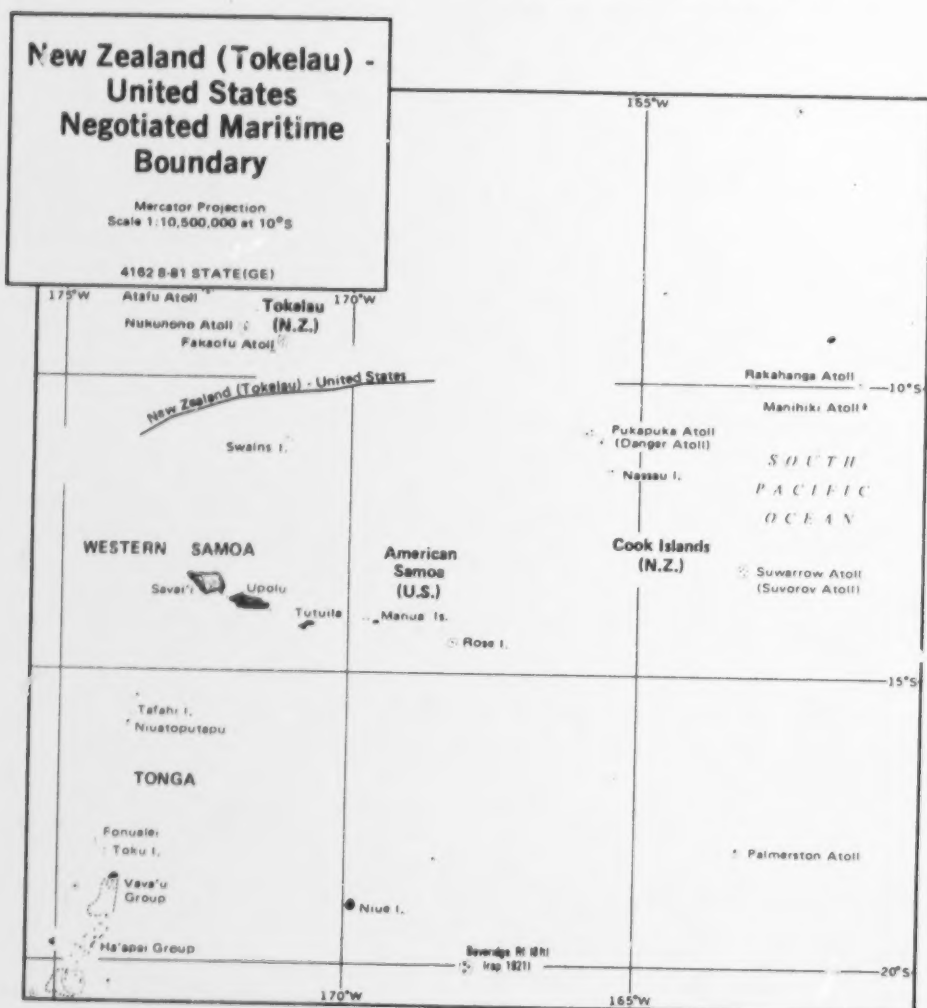
understandings of the two sides. The United States sought and received assurances that United States flag vessels and foreign vessels supplying the canneries in American Samoa will not be barred from seeking licenses to fish in the Tokelauan 200 mile zone.

COST ESTIMATE

The treaty will have no budgetary impact and ratification will not require the authorization or appropriation of any additional funds, according to the Administration.

TEXT OF RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty between the United States of America and New Zealand on the Delimitation of the Maritime Boundary between the United States of America and Tokelau, signed at Tokelau on December 2, 1980.



BEST COPY AVAILABLE